

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MARISELA LEON MARTINEZ.

Case No. 2:17-CV-2454 JCM (GWF)

Plaintiff(s),

## ORDER

v.

## MGM GRAND HOTEL LLC,

Defendant(s).

Presently before the court is plaintiff Marisela Martinez’s (“plaintiff”) motion for reconsideration. (ECF No. 16). Defendant MGM Grand Hotel LLC (“defendant”) filed a response (ECF No. 19), to which plaintiff replied (ECF No. 21).

Also before the court is plaintiff's motion to reopen case. (ECF No. 17). Defendant filed a response (ECF No. 18), to which plaintiff replied (ECF No. 21).

## I. Background

The parties are already familiar with the facts of this case. *See* (ECF No. 14). Accordingly, the court need not recite them again herein. However, the court will provide a brief summary of the procedural history that has led to the instant motion.

Plaintiff initiated this *pro se* action on September 20, 2017, alleging violations of the Americans with Disabilities Act and various other state and federal causes of action. (ECF No. 1-1). On April 17, 2018, defendant filed its motion to dismiss. (ECF No. 8). Plaintiff failed to respond to defendant's motion. Thereafter, on June 5, 2018, the court granted defendant's motion. (ECF No. 14).

In its order, the court analyzed the *Ghazali* factors and determined that dismissal was appropriate in light of plaintiff's failure to respond to defendant's motion to dismiss. *See id; see*

1       also *Ghazali v. Moran*, 46 F.3d 52 (9th Cir. 1995). Moreover, the court noted that it had reviewed  
2 the content of defendant’s motion and determined that the motion presented meritorious arguments  
3 favoring dismissal of plaintiff’s complaint. *Id.*

4           Thereafter, plaintiff filed the instant motions for reconsideration and to reopen case on June  
5 5, 2018. (ECF Nos. 16, 17). As the content of plaintiff’s motions are identical, the court will  
6 construe both motions as motions for reconsideration pursuant to Federal Rules of Civil Procedure  
7 59 and 60. *See Fed. R. Civ. P. 59, 60.*

8       **II. Legal Standard**

9           A motion for reconsideration “should not be granted, absent highly unusual  
10 circumstances.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880  
11 (9th Cir. 2009). “Reconsideration is appropriate if the district court (1) is presented with newly  
12 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3)  
13 if there is an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d  
14 1255, 1263 (9th Cir. 1993); *see Fed. R. Civ. P. 60(b)*.

15           Rule 59(e) “permits a district court to reconsider and amend a previous order,” however  
16 “the rule offers an extraordinary remedy, to be used sparingly in the interests of finality and  
17 conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)  
18 (internal quotations omitted). A motion for reconsideration is also an improper vehicle “to raise  
19 arguments or present evidence for the first time when they could reasonably have been raised  
20 earlier in litigation.” *Marlyn Nutraceuticals*, 571 F.3d at 880.

21       **III. Discussion**

22           In her motions, plaintiff presents no grounds justifying reconsideration of the court’s  
23 previous order. *See* (ECF Nos. 16, 17). Indeed, plaintiff offers no new evidence, no change in  
24 controlling caselaw, and makes no argument that the court committed clear error in dismissing  
25 plaintiff’s complaint. *Id.*

26           The thrust of plaintiff’s argument is that she filed this action *pro se*, and the “absence of  
27 competent legal advice” caused her to miss the deadline to file a response to defendant’s motion.  
28 *Id.* at 3. However, as defendant points out in its responses to plaintiff’s identical motions, even

*pro se* parties are bound by the Federal Rules of Civil Procedure. See *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1996). Moreover, because the court has already found that there exist meritorious grounds for dismissing plaintiff's complaint, reconsideration of defendant's motion to dismiss would be futile.

Therefore, because plaintiff presents no grounds warranting reconsideration of its prior order, the court will deny plaintiff's instant motions. However, the court dismissed plaintiff's claims without prejudice. *See* (ECF No. 14). Therefore, if plaintiff so desires, she is free to file a new action in an appropriate forum that properly asserts her stated claims.

## IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion for reconsideration (ECF No. 16) be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that plaintiff's motion to reopen case (ECF No. 17) be, and the same hereby is, DENIED.

DATED February 20, 2019.

Xelma C. Mahan  
UNITED STATES DISTRICT JUDGE